Williams Cuker Berezofsky, LLC
Protecting Rights for 32 Years
www.wcblegal.com

1515 Market Street
Suite 1300
Philadelphia, PA
19102
215.557.0099
215.557.0673 *fax*

Woodland Falls
Corporate Center
210 Lake Drive East
Suite 101
Cherry Hill, NJ
08002-1163
856.667.0500
856.667.5133 *fax*

Mark R. Cuker†‡
Gerald J. Williams†‡
Esther E. Berezofsky†‡
Beth G. Cole†
Alan H. Sklarsky†
Kevin Haverty†‡*
Samuel Abloeser†
Michael J. Quirk†∂ß
Andrew F. Erba†‡§ß
Joseph A. Venti†‡
Christopher Markos†‡

† Member, Pennsylvania Bar
∂ Member, New York Bar
‡ Member, New Jersey Bar
§ Member, Conn. Bar
ß Member, Wash., D.C. Bar

January 29, 2016

VIA FAX (to 856-757-5076)
The Hon. Robert B. Kugler
U.S. District Court for the District of New Jersey
Mitchell H. Cohen U.S. Courthouse, Court Room 4D
Fourth and Cooper Streets
Camden, New Jersey 08101

Re: ***Paulsboro Train Derailment Litigation***
Ronald Morris and Kristen Pickel v. Consolidated Rail Corp., et al.
No: 1:13-cv-03244 (RBK/KM)

Dear Judge Kugler:

I write regarding the Court's Order issued from the bench yesterday imposing sanctions for attorney conduct during trial. *See* ECF No. 229. Plaintiffs Ronald Morris and Kristen Pickel ("Plaintiffs") respectfully request that the Court reconsider that part of the sanction that affects their ability to present their case to the jury. Plaintiffs request further that the undersigned be permitted to present this letter application to the Court prior to commencement of trial proceedings this morning.

By way of background, Plaintiffs' trial counsel—Mssrs. Cedar and Cuker—spent substantial time preparing to try distinct portions of this case. Mr. Cuker, specifically, had prepared to cross-examine any and all defense witnesses save one (Dr. Panzer). Mr. Cuker had deposed Dr. Greenberg three times and was thus uniquely positioned to conduct the cross-examination of that witness during Conrail's case in chief. In addition to his cross-examination responsibilities, Mr. Cuker had planned to work closely with Mr. Cedar on the closing argument.

Trial on Plaintiffs' claims is now well underway, presenting a real challenge for Mr. Cedar or other counsel to assume Mr. Cuker's role. As a result, Plaintiffs' ability to put on the case they prepared with counsel—their best case—is prejudiced by the exclusion of Mr. Cuker.

Plaintiffs believe that where the Court aims to discipline an attorney for his conduct, the punishment should be shouldered by the attorney. Plaintiffs are not asking the Court to reconsider its decision to impose sanctions—only the type of sanctions imposed insofar as they exclude Plaintiffs' chosen counsel from participation in trial. *Cf. Mruz v. Caring, Inc.*, 166 F. Supp. 2d 61, 70-71 (D.N.J. 2001) (reversing revocation of *pro hac vice* status, holding that "[t]he sanction which Judge Kugler imposed on Mr. Green appears much more extreme and affects not only Mr. Green, but his clients as well. While it is indeed true that admission pro hac vice is a privilege, not a right, revocation of that privilege, once bestowed, sends a strong message which works a lasting hardship on an attorney's reputation. ***More importantly***, the revocation of Mr. Green's pro hac vice admission ***deprived his clients of their chosen attorney well after the initiation of their case, indeed, in its third year***.") (internal citation omitted, emphasis added).

The Court stated yesterday that, in addition to excluding Mr. Cuker from trial, the matter would be referred for consideration of attorney discipline. Plaintiffs submit that that should be the only sanction, based on the record, where Conrail was able to vigorously cross-examine Ms. Pickel *after* the learning of the issue and presenting it to the Court, and where, as the Court found, there is otherwise no apparent prejudice to Conrail and its ability to put up a robust defense to Plaintiffs' claims. *Cf. State v. McCormick*, 298 N.C. 788, 792 (N.C. 1979) ("When a witness' testimony appears to have been memorized or rehearsed or it appears that the witness has testified using the attorney's words rather than his own or has been improperly coached, then these are matters to be explored on cross-examination, and the weight to be given the witness' testimony is for the jury. The sanctions of the Code of Professional Responsibility are there for the attorney who goes beyond preparing a witness to testify to that about which the witness has knowledge and instead procures false or perjured testimony."). A sanction limited to referral of the attorney conduct for ethics review is also consistent with, if not required by, Local Rule 104.1(e)(2), which provides that "[w]hen misconduct or allegations of misconduct which, if substantiated, would warrant discipline of an attorney, shall come to the attention of a Judge of this Court, and the applicable procedure is not otherwise mandated by these Rules, that Judge shall refer the matter in writing to the Chief Judge."

For all of these reasons, Plaintiffs respectfully request that the Court (1) reconsider the type of sanctions imposed, (2) limit the sanction to referral of the matter to Chief Judge Simandle pursuant to Local Rule 104.1(e)(2), and (3) permit Mr. Cuker to resume his role as trial counsel so that the case may carry on as planned.

Sincerely,

Joseph Alan Venti, Esq.

Co-counsel for Plaintiffs

cc: David Damico, Esq. (via email)
Ralph Wellington, Esq. (via email)
Lisa Rodriguez, Esq. (via email)